

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ABIMAEEL MANSO-DIAZ, Plaintiff)	
v.)	C.A. No. 05-192 ERIE
JAMES F. SHERMAN, Warden, Defendant)	District Judge McLaughlin
)	Magistrate Judge Baxter

ORDER

____ Plaintiff's counsel has filed a "declaration" [Document # 14], which, in part, seeks leave to amend Plaintiff's complaint to convert Plaintiff's Section 1983 claims to Bivens claims. This portion of the declaration shall be construed as a motion for leave to amend complaint. In addition, the declaration contains various arguments that are asserted in opposition to those raised by Defendant in its pending motion to dismiss, or in the alternative, motion for summary judgment. This portion of the declaration shall be construed as Plaintiff's response to Defendant's motion to dismiss.

AND NOW, this 15th day of November, 2005;

IT IS HEREBY ORDERED that Plaintiff's motion for leave to amend complaint is dismissed as moot, as it is the practice of this Court to construe Section 1983 claims asserted by a federal prisoner against federal officials as Bivens claims.

IT IS FURTHER ORDERED that the Clerk shall re-docket Plaintiff's declaration [Document # 14] as "Plaintiff's Response to Defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment."

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten

(10) days may constitute waiver of the right to appeal.

S/Susan Paradise Baxter
SUSAN PARADISE BAXTER
Chief U.S. Magistrate Judge